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January 6, 2025

**VIA ECF**

Magistrate Judge Joseph A. Marutollo  
United States District Court  
for the Eastern District of New York  
225 Cadman Plaza East  
Courtroom N324  
Brooklyn, NY 11201

**RE: IN RE PAYMENT CARD INTERCHANGE FEE AND MERCHANT DISCOUNT  
ANTITRUST LITIGATION  
Case No. 05-MD-1720 (MKB) (JAM)  
CardSettlement.org Request to Resume Claims Activities, and, as necessary,  
Request to Conduct Bilateral Discovery**

Dear Judge Marutollo:

I represent CardSettlement.org, and CardSettlement.org hereby requests leave of Court to resume claims filing activities with respect to potential claimants who have signed up for third party claims filing services through CardSettlement.org, as of December 26, 2024, as more particularly described in the accompanying sworn Declaration of Greg Frierson, Managing Director of CardSettlement.org (“Frierson Decl.”).

The overarching and predominant concern of the Court and Class Counsel is as follows, by the Court: “I think I remain concerned that there may be a massive fraud here particularly in light of class counsel’s point that in two months there’s now 13,000 proofs that have been submitted **which may be appropriate or may not be appropriate.**” (December 11, 2024 Transcript, 19:7-11, submitted herewith) (emphasis added). There are other concerns as stated in the accompanying transcript of the December 11, 2024 conference, and the Frierson Decl. was carefully drafted to address all of them, and to give the Court and Class Counsel comfort as to the legitimacy of CardSettlement.org’s operations, which include acquiring claimants and working the claims of those claimants through the claims administration process with Epiq.

To give the Court and Class Counsel additional comfort, CardSettlement.org, as set forth in great detail in the Frierson Decl., offers to send an email, at CardSettlement.org’s expense, to all potential claimants who have signed up for CardSettlement.org’s claims filing services and giving those potential claimants the option of canceling their contracts with CardSettlement.org. The foregoing email is being proposed in the same spirit as the email approved in the stipulation with Betz & Baril (another third party claims filer) by Class Counsel and “so ordered” by the Court [Dkt. No. 9465]. While the emails are not identical, the option to cancel spirit is maintained and eliminates any indicia of fraud on the part of CardSettlement.org. The law of the case doctrine, while not directly on point, is instructive here in the sense that if it was sufficient

for Betz & Baril, it should similarly be sufficient for CardSettlement.org.

In addition to the foregoing, CardSettlement.org and the undersigned understand and appreciate that the protection of the Class is **paramount**. To that end, CardSettlement.org hereby offers to reimburse the Class for all expenses, *i.e.*, reasonable and verified Epiq and Class Counsel fees and expenses associated first alleging, and then determining, the legitimacy of any of CardSettlement.org's withdrawn authorities to represent.

CardSettlement.org hereby respectfully requests leave of Court to resume claims activities as aforesaid and as set forth more particularly in the Frierson Decl.

If and to the extent that the foregoing does not for whatever reason quell any concerns of fraud on the part of CardSettlement.org, then CardSettlement.org would be grateful for the opportunity to discuss the following questions and the answers to the following questions with the Court and with Class Counsel:

- Do the Court, Epiq, and Class Counsel appreciate that the way these issues with the authorities to represent came to light with CardSettlement.org was through or would have been through implementing and executing CardSettlement.org's automations and standard operating procedures?
- Is Class Counsel claiming that CardSettlement.org intentionally falsified authorities to represent some potential claimants? If so, why would contacting the actual merchants themselves and giving them the option to cancel their contracts with CardSettlement.org be problematic and unacceptable? What else does CardSettlement.org need to do to give the Court and Class Counsel an acceptable level of comfort?
- If Class Counsel is accusing CardSettlement.org of fraud, how is business experience and reputation not relevant? Don't business experience and reputation speak to credibility, and isn't whether a business or a person is credible or relevant for analyzing the presence or absence of fraud?
- Why is Class Counsel seeking to punish CardSettlement.org for having the ingenuity and creativity to develop and implement a system that is able to sign up a lot of clients for claims filing services in a short amount of time, in the absence of nefarious or reckless intent? There are many companies that have leveraged technology, like CardSettlement.org, that have been able to scale — *i.e.*, acquire clients — quickly. For example, see <https://www.prnewswire.com/news-releases/mytown2go-is-joining-the-deliverycom-network-301087949.html>. See also book titled *Masters of Scale*, <https://www.amazon.com/Masters-Scale-Surprising-Successful-Entrepreneurs/dp/0593239083>.
- If the object of the settlement is to have merchants who are entitled to participate in the settlement actually participate in the settlement — to make merchants who were wronged by visa/mastercard whole — then how is CardSettlement.org not providing a valuable service to its more than now 17,000 potential clients in connection with assisting with the claims filing and settlement processes? Is Class Counsel seeking to benefit from CardSettlement.org's claims filing services and then cast CardSettlement.org aside, in the

absence of being able to prove fraud? How does that make any sense?

- Why would Class Counsel accuse CardSettlement.org of fraud, and then propose that CardSettlement.org continue to service claims without compensation, as a form of sanctions?
- How can Class Counsel be considered impartial with respect to third party claims filers like CardSettlement.org, when Class Counsel has expressed unequivocal disdain for third party claims filers like CardSettlement.org by openly dismissing the work of third party claims filers like CardSettlement.org by openly characterizing the work as merely “clicking two buttons,” when the work of third party claims filers like CardSettlement.org is clearly more extensive. There are other third parties that CardSettlement.org can subpoena in this connection to provide testimony, insight, confirmation, and substantiation of this sentiment and disdain.
- If and to the extent that Class Counsel has threatened to report or refer CardSettlement.org to the U.S. Attorney (whatever that means, as the U.S. Attorney prosecutes both criminal and civil matters), CardSettlement.org respectfully requests that the Court remind Class Counsel of this: “A lawyer shall not . . . present, participate in presenting, or threaten to present criminal charges solely to obtain an advantage in a civil matter.” Rule 3.4 (*Fairness to Opposing Party and Counsel*), New York State Unified Court System, Part 1200, Rules of Professional Conduct, if and to the extent applicable here <https://www.nycourts.gov/legacypdfs/rules/jointappellate/NY-Rules-Prof-Conduct-1200.pdf>

IMPORTANTLY, NOT A SINGLE CLAIM WITH AN UNAUTHORIZED (BY THE MERCHANT) OR UNCONFIRMED (BY THE MERCHANT) AUTHORITY TO REPRESENT HAS BEEN **SUBMITTED** TO EPIQ THROUGH CARDSETTLEMENT.ORG FOR PARTICIPATION IN THE CLASS SETTLEMENT. THERE IS NO FRAUD ON THE PART OF CARDSETTLEMENT.ORG WHATSOEVER. IF AND TO THE EXTENT THAT CLASS COUNSEL INSISTS ON PESSING WITH A CLAIM OF FRAUD AGAINST CARDSETTLEMENT.ORG, CARDSETTLEMENT.ORG RESPECTFULLY REQUESTS THAT CLASS COUNSEL CLARIFY THE STANDARD BY WHICH CLASS COUNSEL ALLEGES FRAUD, INCLUDING WHERE THE BURDEN OF PROOF LIES, I.E., DOES CLASS COUNSEL HAVE TO SPECIFICALLY PROVE FRAUD BY INTENT OR RECKLESSNESS OR NEGLIGENCE, OR DOES CARDSETTLEMENT.ORG HAVE TO PROVE THE ABSENCE OF FRAUD, OR DOES CARDSETTLEMENT.ORG HAVE TO PROVE GOOD FAITH – AGAIN, DOES CLASS COUNSEL HAVE TO PROVE FRAUDULENT INTENT OR RECKLESSNESS OR NEGLIGENCE ON THE PART OF CARDSETTLEMENT.ORG, OR DOES CARDSETTLEMENT.ORG HAVE THE BURDEN OF PROVING THE ABSENCE THEREOF? THESE ARE EXTREMELY SERIOUS ALLEGATIONS AGAINST THE INTEGRITY OF CARDSETTLEMENT.ORG AND ITS FOUNDERS. DUE PROCESS, EQUAL APPLICATION OF THE LAW, AND PROPORTIONALITY OF CONSEQUENCES, ARE ALL FUNDAMENTAL CONSTITUTIONAL CONSIDERATIONS AT ISSUE HERE.

In closing, if and to the extent that the Court and Class Counsel believe that the previously

ordered discovery remains relevant, CardSettlement.org is prepared to deliver, and will deliver, its responses and objections by the January 6, 2025 deadline. Correspondingly, CardSettlement.org hereby also requests leave of Court to permit CardSettlement.org to engage in bilateral – instead of one-way – discovery, *i.e.*, that CardSettlement.org be permitted to propound discovery upon others, including but not limited upon the Claims Administrator, Epic. This discovery is necessary and relevant because, for instance, by way of example only and without limitation, Class Counsel claims that the following statement made by CardSettlement.org is false: “About 1/3 of the settlement claims have potential issues preventing them from receiving a settlement. We’re here to help you get these problems solved. (this is definitely worth a few minutes!)” This statement is in fact true based on CardSettlement.org’s internal claims data that, if and to the extent the Court does not moot discovery in the light of the foregoing proposal, CardSettlement.org will provide to Class Counsel. In addition, bilateral discovery is also necessary because Ms. Hong at Epiq, during the December 11, 2024 conference, “provided insight” into the claims process, and stated on the record, that Epic “cannot identify if they’re fraudulent like the doctor who raised a concern with us. That, we would have no way because it was a legitimate class member.” Again, if and to the extent CardSettlement.org’s proposed solution above does not give the Court and Class Counsel adequate comfort, discovery of Epiq is necessary and appropriate in this regard to establish the contours of Epiq’s fraud mitigation policies, if any, and to determine how, if at all, CardSettlement.org may or may not be expected to operate under a different standard, that Epiq itself is not expected to meet, nor held to meet.

As always, the undersigned and CardSettlement.org remain available to discuss the foregoing at the pleasure of the Court and Class Counsel.

Respectfully submitted,  
/s/James J. DeCristofaro  
James J. DeCristofaro

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----X **Docket#**  
: 05-md-01720-MKB-JAM  
:  
IN RE PAYMENT CARD INTERCHANGE : U.S. Courthouse  
FEE AND MERCHANT DISCOUNT : Brooklyn, New York  
ANTITRUST LITIGATION :  
: December 11, 2024  
:  
-----X

TRANSCRIPT OF CIVIL CAUSE FOR MOTION HEARING  
BEFORE THE HONORABLE JOSEPH A. MARUTOLLO  
UNITED STATES MAGISTRATE JUDGE

**A P P E A R A N C E S:**  
**(VIA VIDEO/AUDIO)**

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1 THE CLERK: Docket number 5-mb-1720, *In re*  
2 *Payment Card Interchange Fee and Merchant Discount*  
3 *Antitrust Litigation*.

4 Will the parties please state their appearances  
5 for the record starting with plaintiff?

6 MS. BERNAY: Yes. Good afternoon. Alexandra  
7 Bernay from Robbins Geller Rudman & Dowd on behalf of the  
8 Rule 23(b)(3) class.

9 MR. KANE: Michael Kane from Berger Montague  
10 also on behalf of the Rule 23(b)(3) class.

11 MS. HONG: Jennifer Hong on behalf of EPIC  
12 class administrator.

13 MR. DECRISTOFARO: This is James DeCristofaro  
14 of James DeCristofaro Esq. I represent  
15 cardsettlement.org. I believe that two business  
16 representatives from cardsettlement.org are also on the  
17 line; Gregory Frierson and Lawrence Rappaport. They  
18 dialed in separately so they can confirm that they are  
19 here as well if they wish to so do so. And if you don't  
20 know, you might be muted and I think you need to press  
21 star 6 to unmute.

22 MR. FRIERSON: Greg Frierson with  
23 cardsettlement.org is here.

24 MR. RAPPAPORT: Lawrence Rappaport,  
25 cardsettlement.org.

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1 (Pause in proceedings)

2 THE COURT: Okay. Good afternoon, everyone.  
3 This is Judge Marutollo. Any other attorneys need to  
4 identify themselves for the record?

5 Okay. So let me hear first from class counsel  
6 just to provide another overview of the issues that  
7 currently exist with respect to cardsettlement.org and  
8 Merchant Stronghold.

9 MS. BERNAY: Thank you, your Honor. Alexandra  
10 Bernay. I don't believe despite us alerting them, I  
11 don't believe anybody from Merchant Stronghold is on the  
12 line, or if they are, they have not yet identified  
13 themselves but I wanted to just point that out.

14 THE COURT: And let me just interrupt just for  
15 a moment. Is anyone on from Merchant Stronghold?

16 Okay. I'm sorry, continue class counsel.

17 MS. BERNAY: Thank you. Your Honor, we have  
18 written you two letters, one dated December 4th, one  
19 dated December 9th. Those are docket entries 9489 and  
20 9495. Both of these entries deal with two entities, one  
21 of which is here and represented by counsel at  
22 cardsettlement.org. The other, which we just discovered,  
23 Merchant Stronghold, is not on the line.

24 Your Honor, there's been a series of events  
25 beginning in early November related to this entity. It

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1 started when we discovered two videos that directed  
2 watchers to the cardsettlement.org website. Those videos  
3 contained significant false and misleading information.  
4 But we were able to contact cardsettlement.org and they  
5 took those down. But those videos also let us to  
6 cardsettlement.org's website that also contained  
7 significant false and misleading information.

8 Based on those things, we tried to work with  
9 cardsettlement.org without burdening the Court in general  
10 when we find these people misleading class members. We  
11 try to first at least work it out and oftentimes people  
12 immediately make corrections.

13 With this entity we then discovered, and this  
14 was again in I believe in mid-November, that they had  
15 submitted several proof of authority documents that  
16 appeared to be fraudulent. In total, EPIC first  
17 discovered several, including one signed by JK Rowling,  
18 on behalf of JK Rowling, and then signed by one of the  
19 characters in the Harry Potter books. There were also  
20 ones that contained names that were basically profanity.  
21 And in total, after we brought these to  
22 cardsettlement.org's attention, they came back with a  
23 list of 96 proofs of authority that they suggested should  
24 be withdrawn. They since, and again, this is more of the  
25 problematic nature of what we're dealing with, they tried



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1 to un-withdraw 33 of those.

2           Following that issue, we believed at that time  
3 really that everything was dealt with. However, on  
4 December 3rd, EPIC alerted class counsel to a very  
5 serious issue where a doctor who had filed a claim on his  
6 own behalf received a notice of conflict and he contacted  
7 them and said that he had never heard of this entity,  
8 which was cardsettlement.org. He had done no business  
9 with them, et cetera. In looking that up when we  
10 confronted cardsettlement with that, we were told that a  
11 referral partner of theirs known as Merchant Stronghold  
12 falsely filed claims on behalf of this merchant as well  
13 as 47 additional merchants that we know of right now. So  
14 that became a very serious problem.

15           Cardsettlement.org provided us some information  
16 about how Merchant Stronghold had acted without knowledge  
17 or consent of these class members but it had not told  
18 class counsel until class counsel confronted them with  
19 this. I mean these are fake DocuSign documents, as we  
20 detailed in 9489. We also received more complaints  
21 regarding another referral partner of theirs making  
22 significant false and misleading statements and we also  
23 alerted the Court to that again in docket 9489. Then we  
24 filed, and the Court signed on December 7, a proposed  
25 order to show cause. But on Friday night, December --

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1 gosh I guess it was -- I apologize, I don't remember  
2 the -- oh, I'm sorry, December 6th, I received an email  
3 from the original class member, the doctor, who after  
4 working all day received an email from cardsettlement.org  
5 saying please confirm that you wish to do business with  
6 us even though this is an entity -- I mean this office  
7 was already told that this was a fraudulently signed  
8 contract. Now, cardsettlement.org will say I think  
9 something to the effect that they were having issues with  
10 differing email addresses, but the name of the business  
11 is the same.

12 And we decided at that point that things were  
13 just so serious and this company was so unable to manage  
14 the I guess it's now six different issues in an extremely  
15 short time that have been raised. Class counsel believed  
16 that it was necessary to seek a second order to show  
17 cause barring vote this company and Merchant Stronghold  
18 from having anything to do with the settlement and  
19 canceling the contract.

20 And your Honor, just one last thing before I  
21 will cede the floor and that is that the very first time  
22 that the administrator received anything, proofs of  
23 authority from this entity was October 4th. So in that  
24 period of time they had submitted more than 13,000 proofs  
25 of authority. Many of them have been reviewed and are at

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1 least in an approved status which only means that it  
2 meets the requirement that EPIC has laid out, not that  
3 they are valid in any way, shape or form. But it's very  
4 concerning that just in two months this company is really  
5 in like sort of the top five of all filers and it  
6 indicates to us at least that something is wrong in their  
7 controls.

8 And part of the problem is is we just cannot at  
9 this point tell, and I don't know that they've come up  
10 with a way to tell that these are, you know, that the  
11 13,000 that are sitting there are not the product of  
12 fraud. So hopefully, that's a decent overview but I'm  
13 happy to answer additional questions.

14 And your Honor, I also have Ms. Hong from EPIC  
15 on the line and she has been assisting me specifically  
16 with this entity so she may be able to answer some  
17 questions as well.

18 THE COURT: Okay. Thank you, counsel. Let me  
19 hear from counsel for the cardsettlement.org website.  
20 And if you could just say your name before speaking and  
21 you could spell it for the record as well.

22 MR. DECRISTOFARO: Yeah, of course, your Honor.  
23 James DeCristofaro for cardsettlement.org. James,  
24 J-A-M-E-S. DeCristofaro is D-E capital C-R-I-S-T-O-F  
25 like Frank, A-R-O.

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1           Okay. So a couple of things here. First,  
2 there is the history which, you know, early October  
3 cardsettlement.org got involved, they were notified of  
4 some issues in early November. I believe it was November  
5 4th or 5th. Class counsel and cardsettlement.org worked  
6 independently to resolve those issues.

7           And then the issues, as I understand it, that  
8 are now teed up before the Court involve really two  
9 things. Number one, issues that EPIC raised with the JK  
10 Rowling submission and the other submission. And then  
11 the ones that were submitted through Merchant Stronghold.  
12 I'm not saying by any means that what Ms. Bernay said  
13 with respect to the background is not relevant. I'm  
14 saying that it is simply background that as I understood  
15 it was not the subject of the orders to show cause.  
16 That's not to say that it's not and it won't be. But the  
17 order said today with regard to the status conference, it  
18 said come prepared to discuss those two issues.

19           So with respect to the --

20           THE COURT: Well, it said actually including  
21 among other things. I wanted to make sure that you were  
22 aware not only of the issues raised in class counsel's  
23 initial letter but also what was raised in the December  
24 4th letter. I appreciate that you're not a party to this  
25 case and not on the docket, but that was more than a

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1 courtesy than anything. But really, class counsel should  
2 be prepared to discuss all the -- excuse me, counsel for  
3 cardsettlement.org should be prepared to discuss all the  
4 points that class counsel just raised. But go ahead, Mr.  
5 DeCristofaro.

6 MR. DECRISTOFARO: Understood. Thank you.  
7 Thank you, your Honor.

8 So with respect to the -- we'll take the second  
9 one first, the JK Rowling and then the other ones. The  
10 JK Rowling was a test submission that was generated by  
11 cardsettlement.org and it was submitted in error. That  
12 was a mistake on their part. And I think it was, you  
13 know, not knowing really anything from anything else,  
14 without knowing anything from anything else that was  
15 obviously a --

16 THE COURT: Well, just to be clear, was it a  
17 test or was it an error? I mean it seems like those are  
18 two different things.

19 MR. DECRISTOFARO: It was a test submission  
20 that shouldn't have been submitted. I believe what  
21 happened was they were doing some internal things and  
22 they hit the submit button by mistake. So that's as I  
23 understand the JK Rowling.

24 The other ones with profanity were not  
25 generated by them but were nevertheless submitted.

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1 Now, with respect to the 48 other ones --

2 THE COURT: Well, we're just focusing on the  
3 profanity items. Why were those -- what was the outcome  
4 of those?

5 MR. DECRISTOFARO: The outcome is that they  
6 were ultimately resolved and withdrawn. And let me see  
7 if I can start out at the end. Once all of these issues  
8 were brought to cardsettlement.org's attention,  
9 everything on cardsettlement.org's side has been  
10 resolved.

11 THE COURT: Just so I understand it though, to  
12 take a step back, so let's just focus on those  
13 submissions that used profanity. Were those submissions,  
14 were they withdrawn because of some kind of internal  
15 review that cardsettlement.org conducted? Or was that  
16 only withdrawn once class counsel raised the concern?

17 MR. DECRISTOFARO: As I understand it, the  
18 latter. Now --

19 THE COURT: So then why wasn't something  
20 particularly, you know, that was plainly fake if there  
21 was profanity used, why wasn't that uncovered or  
22 addressed within cardsettlement.org's own internal  
23 auditing or internal review process?

24 MR. DECRISTOFARO: Well, so for a couple of  
25 reasons. Number one, it was automated at that time and

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1 now it's not.

2 And number two, they were fairly new to the  
3 game.

4 So going forward and now in place, first of  
5 all, each one of the now 13 plus thousand claims that  
6 have been submitted have gone through an internal vetting  
7 process and then viewed by a human.

8 And number two, as of I believe it's November  
9 21st there's been a standard operating procedure that the  
10 company has been implementing and has implemented  
11 internally and there have been no authority issues raised  
12 since that point.

13 THE COURT: I remain very concerned on this  
14 issue because one, it does not give the Court any piece  
15 of mind to say that each of the 13,000 claims have been  
16 viewed by a human particularly since, you know, maybe  
17 that will weed out the Harry Potter characters and  
18 clearly profane submissions. But obviously, the fact  
19 that it's reviewed by a human doesn't necessarily mean  
20 that, you know, it is a --

21 MR. DECRISTOFARO: Well, yeah, if I may --

22 THE COURT: -- that is a valid submission.

23 MR. DECRISTOFARO: Yeah. So if I may, that  
24 wasn't as specific as it should have been. There is a  
25 four or five page standard operating procedure now that

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1 this human reviews -- the reason why I made the human  
2 versus automated distinction was because, you know, the  
3 human can catch it while the automation, you know,  
4 wouldn't.

5 Now, in respect of the SOP, which should give  
6 the Court comfort, is that there's a whole procedure  
7 which we can submit, by the way, and intend to submit  
8 along with our other supporting documents on December  
9 16th to the extent that that's still the date that the  
10 Court sets for our submission, there's an EIN  
11 verification process that they go through. They go  
12 through a company name process that they verify and they  
13 go through a title of the person submitting the authority  
14 that they go through as well. So it's not just being  
15 looked at by a human to verify a name to see if it's  
16 nonsense or profanity. It's actually the EIN, you know,  
17 the employer identification number, the merchant name,  
18 and the person that's submitting it, who is submitting it  
19 on behalf of the merchant and their title. So it's must  
20 more involved --

21 THE COURT: Counsel, how many fraudulent  
22 submissions were there from cardsettlement.org? Because  
23 in the class counsel letter on December 9th, you know,  
24 there was a suggestion that they're committed,  
25 cardsettlement.org is committed to withdrawing the fake



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1 claims. Is that 96 state claims that have already been  
2 withdrawn or is that more than that number?

3 MR. DECRISTOFARO: As far as I understand it,  
4 and this is -- the number that I discussed with  
5 cardsettlement.org is 48 and those have all been  
6 resolved. And with --

7 MS. BERNAY: Your Honor --

8 THE COURT: Well, hang on a second, class  
9 counsel. Go ahead.

10 MS. BERNAY: Yes.

11 THE COURT: And I'll give you a chance to --

12 MS. BERNAY: Thank you.

13 MR. DECRISTOFARO: And so we haven't discussed  
14 the 96. So this is again, you know, another thing, for  
15 what it's worth, you know, I was engaged last night and  
16 we're working through these issues now so that there  
17 might be a little bit of more work to do with regard to  
18 the specific numbers because this is the first I'm  
19 hearing of the 96 and the 33. What I've discussed with  
20 my client is the 48. So I will certainly welcome any  
21 sort of other information or additional information that  
22 class counsel has. As I understand it, all of those --

23 THE COURT: Let me hear from class counsel just  
24 on this point, but then I want to go back to Mr.  
25 DeCristofaro.

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1 MS. BERNAY: Yes. Thank you, your Honor.  
2 There's two sets of fraudulent or questionable materials  
3 that cardsettlement.org has dealt with.

4 The first was when we alerted them to the  
5 profanity and the JK Rowling issue, they came back and as  
6 detailed on document 9489 at page 2, they did inform us  
7 that the JK Rowling one was mistakenly submitted as a  
8 test. However, they then spent time reviewing what they  
9 submitted and reported to class counsel that there were  
10 96 that they sought to withdraw. This was back in mid-  
11 November.

12 Then they have now tried to I'm going to say  
13 un-withdraw 33. And we have 63 that were on that  
14 original list. Then we then learned about the Merchant  
15 Stronghold fake submission, that are the 48 that you've  
16 been hearing about.

17 So the problem, your Honor, is that even if  
18 somebody reviewed the EIN, the business name, all of  
19 those things, they would not know whether or not those  
20 were falsely submitted because the 48 that include the  
21 doctor, it has accurate information. It just was done  
22 without their knowledge or consent and they falsely  
23 signed DocuSigns. So we don't have a way to determine  
24 whether or not others in addition to the 96 and the 48  
25 are sitting in that pile of 13,000. So hopefully that

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1 clarifies at least some of the numbers.

2 THE COURT: I'm going to ask, and I will set a  
3 deadline for cardsettlement.org to provide a fulsome  
4 response, but let me just ask cardsettlement.org where do  
5 things stand with Merchant Stronghold?

6 MR. DECRISTOFARO: Two things. Number one,  
7 Merchant Stronghold -- and we have all of this  
8 documentation that we can submit to the Court. Merchant  
9 Stronghold admitted that it was their mistake and sent an  
10 email to the claimants.

11 And number two, cardsettlement.org has since  
12 severed the relationship with Merchant Stronghold.

13 THE COURT: And so I understand it, is  
14 cardsettlement.org processing or receiving any new  
15 submissions at this stage?

16 MR. DECRISTOFARO: Independent of Merchant  
17 Stronghold?

18 THE COURT: Yes.

19 MR. DECRISTOFARO: And just in the general  
20 operation of their business? Yes.

21 THE COURT: All right. Are they currently  
22 submitting any claims to EPIC?

23 MR. DECRISTOFARO: Yes, after they review them  
24 and vet them.

25 THE COURT: Okay. And let me just hear, and

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1 maybe class counsel or EPIC's counsel can respond, are  
2 you taking any action with any submissions that have been  
3 sent by cardsettlement.org in the last couple of days and  
4 since this has come to the Court's attention?

5 MS. BERNAY: Your Honor, I do not know the  
6 internal processing that EPIC is doing with those other  
7 than -- but Ms. Hong is on the line and she may be able  
8 to speak to how they are treating claims or proofs of  
9 authority that have come in roughly since December 4th  
10 when we alerted the Court to this problem.

11 THE COURT: Go ahead counsel for EPIC.

12 MS. HONG: Yes, this is Jennifer. I just want  
13 to clarify I'm not counsel for EPIC. I am a team member  
14 of the project team.

15 THE COURT: Okay.

16 MS. HONG: But I can provide insight onto that.  
17 Our team that is reviewing these is looking at them with  
18 a closer eye to make sure that nothing jumps to our  
19 attention in the sense of a JK Rowling or profanity or a  
20 company that looks as if, you know, it's out of place.  
21 An example of it would be if they submitted PayPal, that  
22 may bring something to our attention.

23 But as counsel for the class had said, we  
24 cannot identify if they're fraudulent like the doctor who  
25 raised a concern with us. That, we would have no way

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1 because it was a legitimate class member.

2 THE COURT: So what's cardsettlement.org's  
3 response to that type of a scenario with the doctor  
4 that's described in the class counsel's papers? How does  
5 cardsettlement.org address that type of issue?

6 MR. DECRISTOFARO: Yeah, I think I need to get  
7 with cardsettlement.org and resolve that and figure it  
8 out and review the SOP for that issue in particular. I  
9 think that hits the nail right on the head with respect  
10 to the biggest issue here.

11 THE COURT: Okay. So this is what I'm going to  
12 do. I'm going to ask class counsel to file later today  
13 and updated proposed order to show cause. Just to be  
14 clear, I'm going to set the deadline at December 16th for  
15 both Merchant Stronghold to respond as well as  
16 cardsettlement.org to respond. But I'd like you to  
17 provide a, for class counsel to provide an updated  
18 proposed order to show cause that goes into a little bit  
19 more detail about what is being sought and precisely what  
20 you would hope to get because I think the request that  
21 was made in docket entry number 9495, for instance, also  
22 addresses expenses related to the provision of  
23 information to class members regarding the state of their  
24 claim, directions to file, and any other necessary  
25 information. The class members will know that

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1 cardsettlement.org will not be filing a claim on their  
2 behalf.

3 I'd like some language included in the proposed  
4 order to show cause on that point. And just to be clear  
5 for counsel now at cardsettlement.org, at a minimum you  
6 have to provide a written response outlining why all  
7 cardsettlement.org's claims filing contract should not be  
8 cancelled at cardsettlement.org's expense and provide a  
9 written response to the Court outlining why  
10 cardsettlement.org should not be permanently barred from  
11 any settlement related services, but also should be  
12 responding, and this is something that I'd like class  
13 counsel to propose language but I might adjust  
14 accordingly, addressing whether sanctions should be  
15 issued here against cardsettlement.org and against  
16 Merchant Stronghold because of the significance of this  
17 potential fraudulent activity. And I'll order the same  
18 for Merchant Stronghold.

19 I would ask class counsel if you could file a  
20 proposed order to show cause by later today. And if you  
21 could also send a Word version of that proposed order to  
22 show cause to my chambers, which I'll put my email  
23 address in the docket entry after this conference just as  
24 a minute entry about this conference, we'll enter an  
25 order promptly.

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1 But just for logistics sake, counsel on  
2 cardsettlement.org, be aware that your response will be  
3 due by December 16th. In that response please be aware,  
4 Mr. DeCristofaro, I am going to be looking for as much  
5 information as possible about the standard operating  
6 procedures as well as declarations from the entities and  
7 the individuals involved. I think I remain concerned  
8 that there may be a massive fraud here particularly in  
9 light of class counsel's point that in two months there's  
10 now 13,000 proofs that have been submitted which may be  
11 appropriate or may not be appropriate.

12 I am going to also order that at this point  
13 pending further order of the Court, cardsettlement.org  
14 should not be processing or retrieving any new claims or  
15 new submissions or proofs and certainly should not be  
16 sending anything to EPIC absent further order of the  
17 Court because, you know, the Court may ultimately decide  
18 here to cancel all these claim filing contracts and  
19 permanently bar cardsettlement.org from any settlement  
20 related services.

21 So in the interim, nothing should be taking  
22 place at least absent further order of the Court, you  
23 know, at least at this stage.

24 All right. Anything further --

25 MR. DECRISTOFARO: Yes, can I just --

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1 THE COURT: -- from plaintiff's counsel?

2 MR. DECRISTOFARO: Your Honor -- sorry.

3 THE COURT: Well, let me hear from class  
4 counsel first. Actually, I should add I'm going to order  
5 class counsel to respond to the submission that's made on  
6 December 17th by December 20th. That could be in a  
7 letter format. I'm not going to set a page limit, but a  
8 reasonable amount of pages.

9 Let me hear again from Mr. DeCristofaro.

10 MR. DECRISTOFARO: Thank you, your Honor. I  
11 just wanted to request that the Court clarify with  
12 respect to the last point about cardsettlement.org not  
13 processing any claims. I think the Court did address it  
14 but I just wanted to confirm it and double clarify this.

15 So that process, the class mentioned something  
16 about received. So they have lot of referral partners  
17 that send them let's say data and then what are they  
18 supposed to do with that data? Can they hold it, delete  
19 it, auto respond to it? What would the Court suggest  
20 that we do? Because the receiving thing is the thing  
21 that tripped me up a little bit. I just want to make  
22 sure that we're not running afoul the Court's directive.

23 THE COURT: Let me hear from class counsel on  
24 that point at least in terms of receiving the proofs.

25 MS. BERNAY: Your Honor, I think they should,



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1 you know, hold them with -- I think they should not be  
2 allowed to send anything to EPIC because that starts a  
3 process. And again, this is costing the class  
4 significant time and counsel significant time, and people  
5 at EPIC significant time. And it's costing the class,  
6 you know, because EPIC is having to, once they receive  
7 information they have, processes that they follow  
8 regarding the review of proof of authority.

9 So I think that -- and I'm happy to put this in  
10 the order, I don't think class counsel has a view as to  
11 what cardsettlement does internally with material that  
12 they get from their referral partners. But I think that  
13 they should hold that and not send anything to EPIC until  
14 the Court has a chance to review all of this information.

15 THE COURT: Is there any objection to that  
16 proposal from cardsettlement.org?

17 MR. DECRISTOFARO: No. That's fine. As long  
18 as they can receive and hold, that's fine.

19 THE COURT: I will add that I think receiving  
20 is one thing but soliciting may be something different.  
21 I don't think the Court is prepared to rule on whether,  
22 you know, on the merits of this yet about whether  
23 cardsettlement.org's contract should be cancelled and  
24 permanently barred from any settlement related services.  
25 But I also think just as a matter of prudence given the

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1 circumstances, cardsettlement.org should not be  
2 soliciting, affirmatively soliciting. I mean I realize  
3 the website is up and you may be receiving an  
4 application. But I think obviously if it turns out that  
5 separately there is some additional solicitation going on  
6 or there's something that's being done afterwards, they  
7 only seem to create more problems than there were at this  
8 stage for cardsettlement.org.

9 I will say I'll ask class counsel to include  
10 some language in the proposed order to show cause on this  
11 point that would --

12 MS. BERNAY: Yes, your Honor.

13 THE COURT: That would effectively say that  
14 they should not, that cardsettlement.org should not be  
15 submitting anything to EPIC. And again, if there are  
16 sanctions or if there is some kind of expenses that need  
17 to be covered, it would again seem to be in the best  
18 interest of cardsettlement.org to abide by this order  
19 because it would only seem to create more costs later if  
20 there is an order about cancellation or permanently  
21 barred from settlement services.

22 MR. DECRISTOFARO: With respect to the --

23 MS. BERNAY: Your Honor --

24 THE COURT: Yes, go ahead. Go ahead, Mr.  
25 DeCristofaro.

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1 MR. DECRISTOFARO: I just wanted to -- once  
2 again I apologize for being slow on the uptake here if I  
3 am. With respect to the solicitation part, there's  
4 really two components to it. Well, there's three, right?  
5 There's sitting there and just receiving, which I think  
6 the Court addressed. That's understandable if that  
7 happens. But when you're going out, and I'm just making  
8 this up, if you're sitting there with a sign walking in  
9 Times Square signing up people, that's an affirmative  
10 solicitation. And has the Court ruled on that, you know,  
11 that cardsettlement.org is not to actively solicit? Is  
12 that a prohibition here or has the Court not ruled on  
13 that?

14 THE COURT: I haven't ruled on that because I  
15 think at this stage it may be premature to say that  
16 cardsettlement.org is precluded from actively soliciting.  
17 I think as a practical matter, particularly with  
18 individuals from cardsettlement.org on the line, it would  
19 just seem to behoove cardsettlement.org to avoid any  
20 active solicitation here until the Court issues an order  
21 I mean because if, for instance, you solicit and you're  
22 actively trying to get individuals to come in, the costs  
23 it would seem would be significant if the Court orders  
24 that all such contracts need to be cancelled at  
25 cardsettlement.org's expense. So if anything, this is

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1 more of a note that, you know, if you're going to  
2 actively solicit, the Court isn't prohibiting it, but  
3 that might actually increase the expenses and costs  
4 should the Court ruled against cardsettlement.org in the  
5 days to come.

6 I also add, as you're aware, the Court is  
7 moving as efficiently as possible here. So you know,  
8 cardsettlement.org will have a good sense of the Court's  
9 views on this in a timely manner. So this won't be  
10 something in which you won't know what to do here for  
11 months. I mean we're going to act here as efficiently as  
12 possible.

13 MR. DECRISTOFARO: And then to close the loop  
14 on this and to the extent the Court wishes to deliver  
15 another note which of course we are certainly grateful,  
16 there are many third-party partners who are actively  
17 soliciting as well that cardsettlement.org does not have  
18 day-to-day control over.

19 THE COURT: Well look, I think again I'm not  
20 going to prohibit solicitation but I will say that in  
21 terms of the response to the order to show cause I would  
22 want to know about those third-party entities which  
23 sounds like Merchant Stronghold would have fallen into  
24 that category. And you know, the Court needs to know  
25 what efforts are made to make sure that those entities

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1 are actually processing the submissions in the  
2 appropriate fashion to avoid fraud.

3 So look, at this point I'm not prohibiting  
4 solicitation but I am, because again, that's not ripe for  
5 the Court at this stage, but I am ordering  
6 cardsettlement.org to explain itself. I'll put the  
7 details of what exactly will be required in their  
8 response once I get the updated order to show cause from  
9 the class counsel and then to proceed accordingly.

10 MS. BERNAY: Your Honor, this is Alexandra  
11 Bernay. Just one quick note. At least two points I have  
12 requested and not received the list of all of the  
13 referral partners. And I think that that is really the  
14 area where a lot of these problems have come forward which  
15 is that these are their agents but they are not  
16 necessarily properly controlling them, managing them,  
17 checking with they're submitting obviously this Merchant  
18 Stronghold being at least the most egregious example that  
19 we're aware of.

20 So I would suggest that in this proposed order  
21 that they be required to turn over that complete list  
22 because we have not received it.

23 THE COURT: Any objection to that from counsel  
24 for cardsettlement.org?

25 MR. DECRISTOFARO: Not from counsel but I

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1 haven't checked with my client yet.

2 THE COURT: All right. Well look, I'll ask  
3 class counsel to include whatever information you think  
4 appropriate in the proposed order to show cause. I may  
5 adjust it accordingly once I review. But obviously, you  
6 know, the Court would be interested to know how many of  
7 the third parties are involved and the processes by which  
8 they are vetting these claims.

9 So again, I'll ask class counsel to file that  
10 updated order to show cause, proposed order to show  
11 cause. I will review. The deadline won't change. I'll  
12 enter an updated order to show cause. The  
13 cardsettlement.org should respond by December 16th. By  
14 December 20th, class counsel shall effectively file a  
15 reply or a response to what's been filed by  
16 cardsettlement.org, and then the Court will rule  
17 accordingly. Okay?

18 Anything else at this time?

19 MS. BERNAY: No, your Honor.

20 MR. DECRISTOFARO: No, your Honor. Thank you.

21 THE COURT: Okay. We're adjourned.

22 (Matter concluded)

23 -oOo-

24

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C E R T I F I C A T E

I, MARY GRECO, hereby certify that the foregoing transcript of the said proceedings is a true and accurate transcript from the electronic sound-recording of the proceedings reduced to typewriting in the above-entitled matter.

I FURTHER CERTIFY that I am not a relative or employee or attorney or counsel of any of the parties, nor a relative or employee of such attorney or counsel, or financially interested directly or indirectly in this action.

IN WITNESS WHEREOF, I hereunto set my hand this 12th day of December, 2024.

  
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